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J. LAURENT SCHARFF

December 12, 1984

Honorable Mark S. Fowler
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Complaint of Central Intelligence Agency Against
American Broadcasting Companies, Inc., Filed at the
Federal Communications Commission on November 23, 1984

Dear Chairman Fowler:

As counsel for the Radio-Television News Directors Association (RTNDA), we are forwarding to you a resolution adopted unanimously by the members at the organization's Annual Conference on December 6, 1984. The resolution opposes the above-referenced Complaint of the Central Intelligence Agency (CIA), which alleges deliberate news distortion and violation of the FCC's personal attack rule and fairness doctrine by ABC News. In its resolution RTNDA urges the FCC to dismiss the complaint without reaching its merits.

The several kinds of fairness regulation invoked by the CIA were never intended to be used by a government agency to protect itself from criticism. The fairness doctrine obligates broadcasters to cover controversial issues of public importance and to present significant points of view on the issues. Both of these objectives are seriously thwarted by the CIA's action, which appears to be an attempt to inhibit free and robust reporting of criticism of the CIA.

Such government-inspired inhibition of criticism of government is antithetical to the First Amendment, recalling the infamous and discarded concept of seditious libel. The courts have held that the government cannot bring defamation actions against the media. Moreover, government agencies have greater access to the media to have their views disseminated

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than do other institutions. In this instance, the CIA could have its views presented to the public without resorting to the filing of an official and threatening complaint.

As a matter of policy if not law reflecting these principles, and in order to avoid a chilling effect even more likely than that which the FCC posited in its recent Notice of Inquiry on the fairness doctrine, the Commission should decline to act as the instrument of any other agency of government in calling the electronic press to account for its reporting or criticism of the government. Therefore, RTNDA urges the FCC to dismiss the CIA complaint without delay.

Also, RTNDA offers the CIA complaint as a further example of the danger which inheres in government regulation of fairness, and asks again that such regulation of electronic journalism be ended by legislation or rulemaking.

Identical letters and copies of the resolution are being sent to FCC Commissioners and staff and to members and staff of the Senate Committee on Commerce, Science and Transportation and the House of Representatives Subcommittee on Telecommunications, Consumer Protection and Finance.

Very truly yours,

PIERSON, BALL & DOWD



J. Laurent Scharff

Enclosure

cc: Mr. William J. Casey, Director
Stanley Sporkin, General Counsel
Central Intelligence Agency
Everett H. Erlick, Vice President
and General Counsel, American
Broadcasting Companies, Inc.

RESOLUTION OF THE MEMBERS OF THE
RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION
CONCERNING A COMPLAINT OF THE
CENTRAL INTELLIGENCE AGENCY

Whereas, the Central Intelligence Agency has filed with the FCC a formal complaint against American Broadcasting Companies, Inc., alleging deliberate news distortion and violation of the FCC's personal attack rule and fairness doctrine by ABC News; and

Whereas, the CIA's complaint appears to be the first of its kind filed by an agency of the United States government, of which the FCC is a part; and

Whereas, this action by the CIA, reportedly taken with the approval of the White House and the Department of Justice, appears to have been intended to inhibit free and robust criticism of our government - criticism intended by the First Amendment to the Constitution and by Section 326 of the Communications Act; and

Whereas, the government of the United States has ample access to and coverage by the news media to make its positions known without resort to efforts to intimidate the press through threats of non-renewal of broadcast station licenses and other penalties;

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Wherefore, the members of the Radio-Television News Directors Association, assembled at San Antonio, Texas for their Annual Conference, do hereby express this Association's firm opposition to this action by the CIA and urge the FCC to dismiss the CIA's complaint without considering its substance; and

Further, that the members of RTNDA recognize and so inform the FCC and the appropriate committees of Congress that the CIA's complaint is another example of the danger of government regulation of fairness in news reporting and another reason why the fairness doctrine and other content regulation unique to electronic journalism should be abolished.

Adopted: December 6, 1984

Identical letters have been
sent to the following:

MAILING LIST

Jack Smith, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Smith:

Mr. James C. McKinney
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. McKinney:

Mr. Milton O. Gross
Chief, Fairness/Political
Broadcasting Branch
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Gross:

Honorable Mimi Weyforth Dawson
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Commissioner Dawson:

Honorable Henry M. Rivera
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Commissioner Rivera:

Honorable Dennis R. Patrick
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Commissioner Patrick:

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Daniel L. Brenner, Esq.
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Brenner:

Cecile Srodes, Esq.
Associate Minority Counsel
Subcommittee on Telecommunications,
Consumer Protection & Finance
Room H2-564, Annex 2
Washington, D.C. 20515

Dear Ms. Srodes:

Howard Symons, Esq.
Majority Counsel
Subcommittee on Telecommunications,
Consumer Protection & Finance
Washington, D.C. 20515

Dear Mr. Symons:

Honorable Mark S. Fowler
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Fowler:

Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Commissioner Quello:

Honorable Bob Kasten
United States Senate
Washington, D.C. 20510

Dear Senator Kasten:

Honorable Paul S. Trible
United States Senate
Washington, D.C. 20510

Dear Senator Trible:

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Honorable Ernest F. Hollings
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

Honorable Russell B. Long
United States Senate
Washington, D.C. 20510

Dear Senator Long:

Honorable Daniel K. Inouye
United States Senate
Washington, D.C. 20510

Dear Senator Inouye:

Honorable Wendell H. Ford
United States Senate
Washington, D.C. 20510

Dear Senator Ford:

Honorable Donald W. Riegle
United States Senate
Washington, D.C. 20510

Dear Senator Riegle:

Honorable Bob Packwood
United States Senate
Washington, D.C. 20510

Dear Senator Packwood:

Honorable Barry M. Goldwater
United States Senate
Washington, D.C. 20510

Dear Senator Goldwater:

Honorable John C. Danforth
United States Senate
Washington, D.C. 20510

Dear Senator Danforth:

Honorable Nancy L. Kassebaum
United States Senate
Washington, D.C. 20510

Dear Senator Kassebaum:

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Honorable Larry Pressler
United States Senate
Washington, D.C. 20510

Dear Senator Pressler:

Honorable Slade Gorton
United States Senate
Washington, D.C. 20510

Dear Senator Gorton:

Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

Dear Senator Stevens:

Honorable Carlos J. Moorhead
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Moorhead:

Honorable Thomas J. Tauke
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Tauke:

Honorable Michael G. Oxley
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Oxley:

Honorable James T. Broyhill
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Broyhill:

Rodney L. Joyce, Esq.
Associate Minority Counsel
Subcommittee on Telecommunications,
Consumer Protection & Finance
Room 2322
Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Joyce:

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Honorable Albert Gore, Jr.
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Gore:

Honorable Mickey Leland
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Leland:

Honorable John Bryant
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Bryant:

Honorable Jim Bates
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Bates:

Honorable John D. Dingell
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell:

Honorable Matthew J. Rinaldo
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Rinaldo:

Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

Honorable James H. Scheuer
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Scheuer:

Honorable Al Swift
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Swift:

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Honorable Henry A. Waxman
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Waxman:

Honorable Cardiss Collins
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Collins:

Honorable J. James Exon
United States Senate
Washington, D.C. 20510

Dear Senator Exon:

Gerald J. Kovach, Esq.
Chief Counsel
Committee on Commerce, Science
and Transportation
Senate Russell Office Building
Room 256
Washington, D.C. 20510

Dear Mr. Kovach:

Ralph B. Everett, Esq.
Minority Chief Counsel
Committee on Commerce, Science
and Transportation
Senate Russell Office Building
Room 554
Washington, D.C. 20510

Dear Mr. Everett:

Honorable Timothy E. Wirth
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Wirth: